*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+WRIT PETITION No.24535 of 2007

% Dated 31-12-2007

M.V.V. Satyanarayana

Petitioner

VERSUS

$ The Engineer-in-Chief (R&B),
Hyderabad and another.

Respondents

! Counsel for the Petitioner: Mr. Vemulapalli Prasad Rao.

^Counsel for the Respondents: Government Pleader for
Roads and Buildings

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> HEAD NOTE:

? Cases referred

1. (1995) 1 SCC 478
2. 999 (5) ALT 47
3. AIR 1991 SC 179
4. AIR 1990 SC 958
5. AIR 1996 SC 11
6. AIR 195 SC 74
7. AIR 1965 SC 1718
8. AIR 1980 AP 158
9. AIR 1963 SC 1737
10. AIR 1965 SC 139
11. (2007) 8 SCC 1

THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.24535 of 2007

Date: 31.12.2007

Between:
M.V.V.Satyanarayana

… Petitioner

AND

The Engineer-in-Chief (R&B),
Hyderabad.

and another.

… Respondents

Counsel for the petitioner: Sri Vemulapalli Prasad Rao
Counsel for respondents : G.P. for Roads and Buildings

HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.24535 of 2007

ORDER:-

The action of respondent No.2 in rejecting the technical bids of the petitioner pertaining to the works covered by two tender notifications (for short 'NITs') concerning the works of widening of High Level Bridge to 8 lane carriage way across Musi river at KM 2/0 to 2/2 of Inner Ring Road (Nagole Bridge) including approaches right-side and left-side in Ranga Reddy district is questioned in this writ petition.

The petitioner is a registered Special Class Contractor and he is admittedly eligible to file his tenders in respect of the works in question. The High Level Bridge as described above is divided into two works and NITs were issued separately for the work of widening of bridge on right-side (for short "right-side work") vide Tender No.38539/E-In-C(R&B)/ EE(TEC)/TA12/ AEE5/07/01 dated 06.10.2007 for an estimated contracted value of Rs.2,66,57,986/- and for the work of widening of bridge on left-side (for short "left-side work") vide Tender No.38539/E-In-C(R&B)/EE(TEC)/TA12/ AEE5/07/02 dated 06.10.2007 for an estimated contract value of Rs.5,01,35,383/-. The petitioner applied for both the works through e-procurement by uploading the bid documents within the stipulated time. It is the case of the petitioner that scheduled date of opening of technical and price bids was postponed and the technical bids were eventually opened on 16.11.2007. The petitioner averred in his affidavit that he was telephonically informed by the office staff of respondent No.2 that his technical bids for both the works were rejected on the sole ground that the balance-sheet filed by the petitioner does not stand in his personal name but in the name of M/s.Meher Engineers, a registered firm (for short "the firm"). The petitioner pleaded that he is the registered special class contractor and the Managing Partner of the said firm and in view of the recitals in the parthership deed the balance-sheet and income tax return stand in the name of the said firm, and that the

Income Tax Department has been assessing the turnover of the said firm by including the individual turnover of the petitioner. The petitioner further averred that the firm has no separate and independent entity or income, other than the income of the petitioner and that the petitioner's price bid is lower by 3.06% for both the works which comes to about Rs.80 lakhs less than the estimated value of works. In support of the petitioner's contention that the income of the petitioner is being assessed under firm's name, he filed Ex.P6 income tax return for the assessment year 2006-07.

Sri B.Laxmaiah, Superintending Engineer, Roads and Buildings, Rural Circle, Balkampet, respondent No.2 filed a counter affidavit. He averred that the technical bids in respect of the two works were opened on 31.1.2007 and that he accepted the technical bid of one Sri K.Sudershan Reddy out of three tenders received as he was found to be the only bidder who applied with all the tender eligibility conditions as per the NITs/bid documents. He further stated that the technical bid for the right-side work of the petitioner was rejected on the ground that he has not furnished the income tax return and balance-sheet statement pertaining to his individual name, as the said certificates are in the name of the firm and that the petitioner's technical bid for the left-side bridge work was rejected on the additional ground, namely, that his failure to file documents showing that he has executed the work of the value of not less than Rs.2,00,54,154/- in any one of the five preceding financial years as per the eligibility criterion mentioned under NIT/bid document. Respondent No.2 justified the said rejection on the ground that since the registration of the petitioner as Special Class Contractor was done in his individual name and that the firm does not figure in the Registration Certificate, the financial statements standing in the name of the said firm could not be taken into consideration. Respondent No.2 further stated that in June, 2007 a similar tender filed by the petitioner was rejected on the self same ground.

In the reply affidavit filed by the petitioner it is asserted that the income tax return filed in the name of the firm reflect the works executed by the petitioner in his name and that authorities such as Municipal Corporation of Hyderabad, Hyderabad Urban Development Authority and other Government Departments have been accepting the financial statements of the firm for awarding the works in the petitioner's name. In respect of the left-side work the petitioner disputed the correctness of the ground of rejection, namely, that he did not satisfy the requirement of execution of the stipulated value of the work in any one of the preceding five years. The petitioner re-iterated his stand that the turnover assessed by the Income Tax Department in the name of the firm is nothing but the turnover achieved by the petitioner in his individual name and that the said procedure was being followed in consonance with the terms of he partnership deed.

Sri Prasad Rao Vemulapalli, learned counsel for the petitioner submitted that rejection of the technical bids of the petitioner on the ground that the petitioner failed to file the income tax return and balance-sheets standing in his name is illegal and unsustainable. He further contended that the petitioner is the Managing Partner of the firm and since the income tax returns reflect the turnover achieved by the petitioner in his individual name the respondents are not justified in rejecting his technical bid on the purported ground of non-compliance of clause 3.3B(f) of the NITs. He also contended that since the firm is not a legal entity, the income tax return and balance-sheet standing in the name of the firm shall enure to the benefit of its partners. In support of his contention, he relied upon the judgment of the Supreme Court in **New Horizons Limited and Another Vs. Union of India and Others**[1] and also a judgment of this Court in **S.Kireetendranath Reddy Vs. A.P.Transco**[2]**.** He also relied upon the

judgment of the Supreme Court in **M/s.Poddar Steel Corporation Vs. M/s.Ganesh Engineering Works and Others**[3] in support of his contention that every term in a tender need not be complied with in meticulous detail and that a tender cannot be rejected on a technical irregularity of little or no significance.

Per contra, learned Government Pleader for Transport and Roads and Buildings contended that clause 3.3B (f) is an essential condition and that since the documents produced by the petitioner in purported compliance of the said condition do not reflect the name of the petitioner, his technical bid was rejected and that the said rejection being inconsonance with the tender conditions the same cannot be interfered with. The learned Government Pleader relied upon the judgment of the Supreme Court in **M/s.G.J.Fernandez Vs. State of Karnataka and Others**[4] and **Tata Cellular Vs. Union of India**[5] in support of his contention. The learned Government Pleader further contended that as the petitioner applied for the work in his own name, he cannot file documents pertaining to the financial standing of the firm, because the petitioner's acts in the course of execution of the work if awarded would not bind the firm and in such an event the department will not be in a position to enforce the liabilities if any incurred by the petitioner against the firm. He therefore, submitted that viewed from that perspective clause 3.3B (f) is an essential condition to be complied with. The learned Government Pleader further contended that in respect of the left-side work, the petitioner failed to produce the documents to show that he executed a similar work of the value of Rs.2,00,54,154/- in any one of the preceding five years and that therefore, the ground of rejection of the technical bid in respect of the said work does not suffer from any infirmity.

I have carefully considered the respective submissions of the learned counsel and perused the record. The common ground on which

the technical bids of the petitioner pertaining to both the works are rejected is that petitioner failed to file the PAN card and income tax return standing on his name and thereby he failed to comply with clause 3.3B(f) of the NITs. The petitioner's technical bid for the left-side work of the bridge was rejected on the additional ground that the petitioner failed to demonstrate that he executed the work of the value of Rs.2,00,54,154/-.

Let me first examine whether the common ground on which the technical bids for both the works are rejected can be sustained in law?

Clause 3.3 of NITs prescribes qualification criteria for opening of the price bid. It is apposite to extract the said clause hereunder:

" 3.3 **Qualification Criteria for Opening of the price bid.**

A. To qualify for opening the price bid each firm in its name, should have during the last five financial years from 2002-2003 to 2006-2007 (specify the financial years those immediately preceding the financial year in which the tenders are invited)

vi. The bidder should have satisfactory completed, as prime contractor similar nature of Bridge works of value not less than Rs.1,06,63,195/- (and Rs.2,00,54,154/- in respect of left-side work) in any one financial year during the last five financial years i.e., from 2002-2003 to 2006-2007 (this value will be updated to the year 2007-2008 in which the tenders for this work is called duly giving 10% weightage for each financial year. Sub-contractors/GPA holders' experience shall not be taken into account.

Note: The cost of completed works of previous years shall be given weightage of 10% per year to bring them to current price level (the financial year in which bids are invited).

a) Executed in any one year the following minimum physical quantities.

S.No.	**item**	**for this work__**
1.	PCC or VCC or VRCC combined quantity	1324 cum (2114 cum for left-side work)

B) Each bidder should further demonstrate:

a) Availability (either owned or leased of the following key and critical equipment for this work)

S.No.	Equipment type and Characteristics	Minimum no. of required
1.	Concrete Mixers	3 nos.

2.	Weigh Batchers	2 nos.
3.	Pin & Pan Vibrators	10 nos.

b. The contractor shall procure the Hot Mix material to the work site duly maintaining the required laying temperature as per the specifications.

c. For all works costing more than Rs.2.00 crores, the contractor shall submit quality plan and also show proof of owning quality lab or tie-up with an established quality lab.

d. Availability of the key personnel

i. Graduate Engineer 1 no.
ii. Diploma Holders with adequate experience 1 no.

e. Liquid assets and/or credit facilities of not less than Rs.53,31,598/- credit facility/letter of credits/solvency certificates from commercial banks etc.

f. Copy of PAN card with a copy of latest income tax return submitted with proof of receipt.

g. Copy of Value Added Tax (VAT) registration and latest valid commercial tax clearance certificate."

A reading of Clause 3.3 as extracted above reveals that it is in two parts, namely, A and B. Part-A prescribes experience of the bidder of satisfactory completion of work executed in its name (as prime contractor) similar nature of bridge works of a specified value in any one financial year during the last five financial years, i.e., from 2002-03 to 2006-07. In respect of the right-side work, it is stipulated that the bidder should have executed in the above mentioned period the work of similar nature of the value of not less than Rs.1,06,63,195/- and in respect of left side work he should have executed a similar work of the value of Rs.2,00,54,154/-. Under part-B of the said clause each bidder should further demonstrate availability of critical equipment and key personal indicated therein. Under sub-clause (f) of part-B copy of PAN card with a copy of latest income tax return submitted with proof of receipt shall be submitted.

With respect to the right-side work of the bridge, the respondents admit that the petitioner satisfied the requirement of part-A and also part-B

except to the extent of sub-clause (f) of clause 3.3B. From a careful reading of clause 3.3 it would be evident that clause 3.3A constitutes the core and substantive requirement to be satisfied by the bidder, as it relates to the previous experience of the bidder in respect of the work of similar nature. Similarly, under part-B clauses (a) to (d) which prescribe proof of availability of critical equipment and key personal and clause-(e) under which the bidder should produce proof of owning liquid assets and/or credit facility of not less than Rs.53,31,598/- (in the case of right-side work), solvency certificates etc., also constitute conditions of substantive nature. As regard clauses 3.3B (f) and (g), all that is required therein is that the bidder should file copies of PAN card with latest income tax return submitted with proof of receipt and Value Added Tax (VAT) registration and latest valid commercial tax clearance certificate respectively. It is significant to notice that all the sub-clauses of clause 3.3 except sub-clauses (f) and (g) stipulate that the bidders should produce proof of possessing experience, critical equipment, key personal and liquid assets/solvency certificate to the extent of specified requirements, where as such stipulations are not contained in sub-clauses (f) and (g) and, as already noted under the said clauses, the bidders are merely required to file copies of the documents prescribed therein. The said clauses do not further stipulate the requirement of minimum turnover etc., both in respect of income tax and VAT. On a careful consideration of clause 3.3 in its entirety, I am of the considered view that while all other sub-clauses of clause 3.3 are substantive (essential) in nature, sub-clauses (f) and (g) are merely procedural in nature which are intended to ensure that the bidders are assessed under the Income Tax Act, 1961 and registered and assessed under the Andhra Pradesh Value Added Tax Act 2005.

Keeping in view the nature of sub-clause (f) of clause 3.3B, I shall now examine whether respondent No.2 is justified in rejecting the technical

bid filed in respect of right-side work on the ground of violation of the said clause. The claim of the petitioner that he is the managing partner of the firm is admitted by the respondents (in para-6 at page-4 of the counter affidavit of respondent No.2). I find from the record produced by the learned Government Pleader that alongwith the tenders, the petitioner filed a copy of partnership agreement dated 1.4.1993 with a copy of the deed of amendment of the partnership dated 2.4.1993. Clause 6 of the amended partnership deed reads as under:

> "Partner No.1 viz., Sri M.V.V.Satyanarayana shall be the Managing Partner of the firm who shall have the power of control and management of the affairs of the business. He shall have the power individually to apply for tenders and negotiate the terms thereof, to enter into agreements, to accept measurements, to sign the bills and to receive payments etc. He shall also have the power to appoint necessary staff, to maintain the books of accounts and to incur necessary expenses and to do all acts and things necessary and incidental to carry on the business of the firm. **Any of the works tendered and obtained in the name of Sri M.V.V.Satyanarayana shall be deemed to have been taken on behalf of this firm.**" (emphasis added}

From the above re-produced clause it is clear that it is agreed by all the partners that the petitioner who is the managing partner of the firm is inter alia given the freedom to individually apply for tenders and it is further agreed that where the contracts are awarded in the name of the petitioner they shall be deemed to have been awarded on behalf of the firm.

In this connection it is necessary to consider the relevant provisions of the Indian Partnership Act, 1932 (for short "the Act"). Section 4 of the Act defines the terms 'partnership', 'partners', 'firm' and 'firm name' as under:

> ""Partnership" is the relation between persons who have agreed to share the profits of business carried on by all or

any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".”

Section 11 of the Act enables the partners of the firm to determine their mutual rights and duties by contract between them and that such contract may be expressed or implied. Section 12 inter alia provides that subject to contract between the partners every partner has a right to take part in the conduct of the business. Under Section 13(e)(i) of the Act the firm shall indemnify a partner in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business and under section 13(f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm. Under Section 16, if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for the profit and pay it to the firm and if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business. Under Section 18, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. Under Section 19, subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm and the partner has the implied authority to act as an agent of the firm. Under Section 22 in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention of binding the firm. Under Section 26, where, by the wrongful act or omission

of a partner acting in the ordinary course of the business of a firm, or with the authority of its partners, loss or injury is caused to any third party or any penalty is incurred, the firm is liable therefor to the same extent as the partner. A similar liability is fastened on the firm in respect of mis-application of money and property received from third parties under Section 27(a) of the Act.

From the above reproduced definitions under Section 4, it is clear that a partnership is nothing but a collective form of all its partners.

In **Bacha F Guzdar, Bombay Vs. Commissioner of Income Tax, Bombay**[6] it is held that a partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. I n **Her Highness Maharani Mandalsa Devi Vs. M.Ramnaram Private Limited**[7] the Supreme Court held that for certain purposes law has extended a limited personality to a firm which is not a legal entity.

This Court in **S.Kireetendranath Reddy (2 supra)** considered *in extenso* the status of a partnership firm in law and its partners. That was a case where A.P.Transco declined to recognize the experience claimed by one of the two partners of a partnership firm in respect of the works executed in the name of the firm. When the said action was questioned in a writ petition, this Court in para-18 held as under:

> "It is well settled that a firm is not a legal entity, but is only a collective or compendious name for all partners. It is neither a legal entity nor a person. A firm has no legal existence apart from its partners. A firm name is really a description of the individuals who compose it. The essential characteristic of a firm is that each partner is a representative of the other partners. Each of the partners is an agent and a principal. He is an agent in so far as he can bind the other partners by his acts within the scope of the partnership business and he is principal to the extent that he is bound by the acts of the other partners. The liabilities of the firm

can be enforced against each of the partners personally."

After analyzing various provisions of the Act and the decided case law in para 24, it is held as under:

> "An examination of the above propositions of law and the authorities clearly goes to show that a partner when he acts in all matters which are within the scope and objects of the partnership, **he steps into the shoes of the firm,** which is a personified person but not a legal person in popular language, and binds all other partners, who compose it by his acts. Artifice of speech devised for compendious expression is extensively used in popular language to personify even non-persons as persons. For example, we speak of the estate of a deceased person, a team of players, a group of students, a public meeting, and a Bench of Judges as if they were themselves persons though they are not. Similarly, we speak of a firm as a person distinct from the individual persons. Undoubtedly, all legal personality involves personification, but all personification need not necessarily involve legal personality. Salmond's the following observation is apposite:
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> > "…….legal personality is not reached until the law recognizes, over and above the associated individuals, a single entity which in a manner represents them, but is not identical with them."

On the above premise, the action of the A.P.Transo in disqualifying the petitioner therein by not taking into consideration the experience of the firm as his experience as a partner was invalidated by this Court and the A.P.Transco was directed to treat the experience of the firm as his experience. In my considered view the ratio laid down in this judgment apply in all fours to the present case.

In the light of the settled law as discussed above a firm has no independent existence dehors its partners. I have perused letter dated 17.11.2007 addressed by respondent No.2 to respondent No.1 wherein he

sent his recommendations after evaluating the technical bids. In the case of the petitioner's technical bid, he stated as under:

> "Sri M.V.V.Satyanarayana, the bidder has submitted hard copies in time to this office. During the course of technical evaluation of his bid it was observed that, the bidder has not furnished the IT return filed on the same name i.e., Sri M.V.V.Satyanarayana. Instead he has submitted the IT returns filed on the name of a firm M/s.Meher Engineering of which Sri M.V.V.Satyanarayana is the managing partner. As such the bid has not been considered qualified technically."

From the reasons contained in the above re-produced letter of respondent No.2 it is clear that the rejection is based merely on the factum of not complying with sub-clause (f) in its letter and there is no discussion on the implication of such non-compliance. Once it is legally conceded that a partnership firm has no independent legal existence, I do not see any justification whatsoever in respondent No.2 not considering the income tax return filed in the name of the firm of which admittedly the petitioner is the managing partner. Respondent No.2 seems to be obsessed with the fact that the income tax return was not "on the same name" of the petitioner and this objection looks to me to be hyper-technical. As concluded supra, the purpose of sub-clause (f) of clause 3.3B appears to be limited only to ensure that the bidder holds a PAN card meaning thereby that he should be an assessee. The proof in respect of such fact could be shown only by producing the latest income tax return. With the filing of the income tax return and the PAN card standing in the name of the firm of which the petitioner is the managing partner, the requirement of sub-clause (f) is adequately complied with.

It is seen from the technical bid evaluation of the petitioner contained in the record, as against the value of liquid assets/credit facility/solvency of not les than Rs.53,31,598/-, the petitioner produced the

certificate to the extent of Rs.725 lakhs. It is therefore, quite evident that there is no dispute about either the petitioner's experience or his owning critical equipment or his having key personal or solvency as required under the tender conditions. This is obviously the reason for respondent No.2 in not mentioning any reason other than the reason that the petitioner has not filed the income tax return in his own name.

In this context let me examine the issue from another angle. Supposing the firm was a proprietary concern with the petitioner as a sole partner, in such a case if the petitioner filed the tender in his personal name and filed the income tax return of the firm as proprietary concern, would the respondents have rejected the tender of the petitioner? The answer should be an emphatic 'no'. This being so, respondents could not have rejected the petitioner's tender merely because he filed the income tax return standing in the name of the firm.

When a firm is represented by its partner, there is nothing in law which separates him from the firm which he represents, as the firm has no legal entity. In this perspective the name which does not spell any magic is not so much material, but it is the composition of the firm which is material for, the partner of a firm steps in to the shoes of the firm.

> Lindlay and Banks on 'partnership' in their sixteenth edition wrote:
>
> "In law the firm name represents no more than a convenient designation applicable to the persons who, on each occasion that the name is used, then constitute the firm. **It serves no other purpose**." (Emphasis added)

While dealing with the contention that unless the bidder has executed the work "in his own name", the work executed in the name of the firm cannot be considered in favour of its partner, this Court in **S.Kireetendranath Reddy (2 supra)** went into the concept of what is a 'name' and held in para-36 as under:

> "The word 'name', as a noun, is that by which a person or thing is known. In other words, 'name' is the designation of an individual person, or a firm or a corporation and it is the distinctive characterization in words by which one is known and distinguished from others. 'Name' is not a legal percept nor 'name' as such can be equated with identifying a person from others, and this device is invariably used by mankind not only in respect of natural persons and legal persons but also in respect of no-persons like animals, plants and non-living things. As stated above, experience, in legal parlance, can be attributed to persons only, whether they are natural or legal, and not to anyone else. The 'name' as such does not denote the experience of the person who bears it. The change of the name in no way affects the experience of the person who bore that name. Therefore, the consideration of the name of the applicant for award of the contract is irrational and that cannot be a valid basis for any distinction in law."

From the analysis as made above, I am convinced that the rejection of the petitioner's technical bid merely on the ground that the income tax return stands in the name of the firm and not in the personal name of the petitioner has no legal basis whatsoever.

I find another crucial angle to this case on which also the result of this case can turn. The learned counsel for the petitioner relied upon clause 6 of the partnership agreement as amended, for the purpose of convincing this court that the petitioner is permitted to execute works in his own name, but he is obliged under the said clause to assess the works in the name of the firm. He has taken pains to explain and correlate with reference to the income tax returns filed in the name of the firm, the works executed by him in his name with the turnover mentioned in the name of the firm in the income tax returns. In my opinion this exercise on the part of the learned counsel is wholly unnecessary, because, clause 6, which is unequivocal in its terms, obviates the necessity for such an exercise.

The said clause empowers the petitioner not only to individually apply for tenders, negotiate the terms thereof and enter into agreements etc., but it also contains a deeming provision, namely, that the works tendered and obtained in the name of the petitioner shall be deemed to have been taken on behalf of the firm. Thus on the true construction of this clause it is quite apparent that though the petitioner executed the works in the past in his own name, they are deemed to have been executed on behalf of the firm. Clause 6, in my view, is in accordance with the provisions of Section 16 of the Act which was referred to supra and a fortiori, the tender which is filed by the petitioner in his name is deemed to be filed in the firm's name. Viewed from this perspective, even if sub-clause (f) of clause 3.3B of NITs is treated as substantive in nature and construed literally, the petitioner complied with the said condition by filing the income tax return of the firm. The rejection of technical bid cannot therefore be sustained even from this perspective.

The contention of the learned Government Pleader that if the tender of the petitioner is accepted on the basis of the income tax return of the firm, the department may not be in a position to enforce the petitioner's liability against the firm is without any basis. In the face of the above mentioned clause of the partnership deed under which the work awarded to the petitioner is deemed to be the work awarded to the firm, the firm is liable for the wrongful acts of the petitioner and it is liable to make good the loss if any caused to the respondents by operation of the provisions of Sections 26 and 27 of the Act. Therefore, these statutory provisions read with clause 6 of the partnership agreement allay the said apprehension expressed by the learned Government Pleader at the hearing though the same does not find a place either in the counter affidavit filed by respondent No.2 or in the reasons mentioned in the record maintained by the respondents and produced before the Court.

In **New Horizons (1 supra)** the Supreme Court held that the terms of a tender document have to be construed from the stand point of a prudent businessman. In that case the experience of one of the partners of joint venture was refused to be treated as the experience of the company. Though it was a company which has a legal entity, unlike a partnership firm, the Supreme Court went to the extent of lifting the corporate veil to know who are the persons behind the company. In para-23 it is held as under:

> "While considering the requirement regarding experience it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. **The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman**. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work. *He would go not by the name of the company but by the persons behind the company. While keeping in view the past experience he would also take note of the present state of affairs and the equipment and resources at the disposal of the company*. The same has to be the approach of the authorities while considering a tender received in response to the advertisement issued on 22/4/1993." (emphasis added)

In the instant case as already noted, the respondents are satisfied about the past experience and the capacity of the petitioner to execute the right-side work as reflected in his possession of key and critical equipment, key personal and solvency which are the relevant criteria to assess the capacity of a contractor to execute the tendered work. But the respondents failed to exhibit business prudence by a pedantic construction

of clause 3.3 B(f) of the NIT.

The Full Bench judgment of this Court in **I.T.Commissioner, Andhra Pradesh, Hyderabad Vs. G.P.Naidu**[8], and the judgments of the Supreme Court in **Champaran Cane Concern (Dissolved) Vs. State of Bihar and Another**[9] and **Devji Vs. Magan Lal R.Atharana and Others**[10] cited and relied upon by the learned Government Pleader have no application at all to the case on hand.

In **I.T.Commissioner (8 supra)** the question arose whether for the purpose of assessment under the Income Tax Act the income of the two partnership firms can be clubbed. In the context of deciding the said issue in para-25(2) the Full Bench held as under:

> "A firm as such is not entitled to enter into partnership with another firm or individual as the definition of 'person' in Section 3(42) of the General Clauses Act 1897 cannot be imported into Section 4 of the Indian Partnership Act."

I have carefully read the said judgment and I have no manner of doubt that the same has no application to the facts of this case.

In the case on hand the firm in question has not entered into any partnership with another firm or an individual, but the managing partner of the firm who is the petitioner herein is claiming to treat the income tax returns filed in the name of the firm as sufficient compliance of sub-clause (f) of clause 3.3B.

The judgment in **Champaran Cane Concern (9 supra)** has equally no application because that was a case where provisions of Bihar Agricultural Income Tax Act, 1948 and the Partnership Act, 1932 were dealt with and the question which was referred to the High Court was whether for the purpose of assessment under the said Act, the assessee therein was a partnership firm or a co-ownership concern.

Similarly, the judgment in **Devji (10 supra)** also has no application

because in that case a partner of a firm took sub-lease of a property in his own name and the claim of the lessor who granted sub-lease against the partnership firm was rejected on the ground that in order to bind the partnership firm, it has to be proved that the act of the partner is done in the name of the firm or in any other manner expressing any intention to bind the firm. I am at a loss to know how this judgment has relevance in the context of the present case.

As observed supra, clause 6 of the partnership deed in the instant case expressly authorized the petitioner to represent the firm by filing tenders in his own name. The judgment in **G.J.Fernandes (5 supra)** has no application to the facts of this case.

Learned Government Pleader also relied upon para-84 of the judgment in **Tata Cellular (5 supra)** in support of his contention that one of the requisites of a valid tender is that it must be made in the proper form. In the light of the discussion already undertaken above there cannot be any manner of doubt that the tender filed by the petitioner is in proper form and the only question was whether there was compliance with sub-clause (f) of clause 3.3B. Indeed the judgment of the Supreme Court in **Tata Cellular (5 supra)** is relevant from a different stand point in this case. As held therein, if the decision of an authority suffers from illegality, irrationality or procedural impropriety, the same is amenable for judicial review by the High Court under Article 226 of the Constitution of India. Quoting Lord Diplock in Council of Civil Service Unions Vs. Minister for the Civil Service (1985 (1) AC 374) the Supreme Court held that whether a decision is irrational or not has to be judged by applying Wednesbury principle as described in Associated Provincial Picture Houses v. Wednesbury Corporation (1948 (1) KB 223) in which it is held that a decision of a public authority will be liable to be quashed or otherwise dealt with by appropriate order in judicial review proceedings where the court

concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. By applying the said principle to the facts of the present case, I have no doubt in my mind that the decision of the respondents in rejecting the petitioner's technical bid in respect of the right-side work of the bridge covered by tender No.38539/E-In-C(R&B)/EE(TEC)/TA12/AEE5/07/01 dated 06.10.2007 is irrational.

In **Reliance Energy Ltd., and Another Vs. Maharashtra State Road Development Corporation Ltd., and Others**[11] the Supreme Court while relying on its judgment in Reliance Airport Developers (P) Ltd., v. Airports Authority of India ((2006) 10 SCC 1) held that the decision maker must understand correctly the law that regulates his decision making power and he must give effect to it, otherwise, it may result in illegality. It was further held that the principle of judicial review cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers and that judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. In my considered view, the above observations aptly apply to the present case. The respondents have failed to keep in view the law of partnership and the legal status of a firm qua the status and relationship of its partners. This has resulted in arbitrarily rejecting the technical bid of the petitioner. With the rejection of the technical bids of the petitioner and another tenderer in respect of the right-side work, the respondents were left with no option, but to consider the price bid of a single tenderer who quoted 4.93 % in excess of the estimated value. The petitioner claims that he quoted 3.06 % less than the estimated value. I have no reason to doubt this submission of the petitioner. By rejecting the petitioner's technical bid by making a dogmatic approach the respondents placed themselves in a position where they are compelled to consider the price bid of the only

tenderer remaining in the field. This, in my opinion, certainly affects the public interest. Nowhere in the pleadings or record did the respondents ever express lack of capacity or competence on the part of the petitioner to execute the right-side work of the bridge covered by tender No.38539/E-In-C(R&B)/EE(TEC)/ TA12/AEE5/07/01 dated 06.10.2007.

For all the aforementioned reasons, I hold that rejection of technical bid of the petitioner in respect of NIT No.38539/E-In-C(R&B)/EE(TEC)/TA12/AEE5/07/01 dated 06.10.2007 (right–side work) does not conform to law and the extant tender conditions and is therefore, declared as illegal and invalid.

As regards NIT No.38539/E-In-C(R&B)/EE(TEC)/ TA12/AEE5/07/02 dated 06.10.2007 (left-side work) the additional ground of rejection of petitioner's technical bid is that his failure to produce the certificate showing that he executed the work of the value of not less than Rs.2,00,54,154/-. Though the learned counsel for the petitioner made strenuous efforts to convince this Court that the petitioner satisfies this condition, he has eventually conceded that the certificate produced by him relating to Jamia Osmania road over-bridge does not show that in any one year during 2004-05 and 2007-08, the petitioner executed work of the said value. Though the learned counsel sought to rely upon the certificate relating to execution of works of gauge conversion between Mudikhed and Nizambad, he agreed that the said work is not similar to the work involved under this contract. In view of the above, the petitioner failed to prove that he satisfied the eligibility criteria of having executed a similar work of the value of Rs.2,00,54,154/- in any one of the preceding five years and therefore, I do not see any illegality or irrationality in the decision of the respondents in rejecting his technical bid in respect of left-side work of the bridge covered by tender No.38539/E-In-C(R&B)/EE(TEC)/TA12/AEE5/07/02 dated 06.10.2007.

In the result, the writ petition is partly allowed. The respondents are directed to open the price bid of the petitioner relating to NIT No.38539/E-In-C(R&B)/EE(TEC)/TA12/AEE5/07/01 dated 06.10.2007 (right–side work) and consider the same alongwith the price bid of the other qualified tenderer, namely, K.Sudershan Reddy.

As a sequel to disposal of the writ petition, W.P.M.P.No.31945 of 2007 filed by the petitioner seeking interim direction is disposed of as infructuous.

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C.V.NAGARJUNA REDDY,J

Date:31.12.2007
mdaa

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[1] (1995) 1 SCC 478
[2] 1999 (5) ALT 47
[3] AIR 1991 SC 1579
[4] AIR 1990 SC 958
[5] AIR 1996 SC 11
[6] AIR 1955 SC 74
[7] AIR 1965 SC 1718
[8] AIR 1980 AP 158
[9] AIR 1963 SC 1737
[10] AIR 1965 SC 139
[11] (2007) 8 SCC 1